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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 **DENNIS HOF**, an individual; **CHERRY**
14 **PATCH LLC**, a Nevada limited liability
15 company,

16 Plaintiffs,

17 vs.

18 **NYE COUNTY; NYE COUNTY BOARD OF**
19 **COUNTY COMMISSIONERS; DAN**
20 **SCHINHOFEN** (in his personal and official
21 capacity as an employee of Nye
22 County); **ANDREW BORASKY** (in his
23 personal and official capacity as
24 Commissioner of District 4 of Nye
25 County); **JANE DOE**; and **JOHN ROE**,

Defendants.

Case No. 2:18-cv-01492-GMN-NJK

**EMERGENCY MOTION FOR EARLY
DISCOVERY**

Plaintiffs Dennis Hof and Cherry Patch, LLC ("Cherry Patch") move this Court for an order permitting them to take early discovery relevant to their request for injunctive relief. Plaintiffs should be entitled to take limited and narrow discovery in order to gain evidence to support their Motion for Preliminary Injunction.

Plaintiffs file this Motion on an emergency basis because they require the requested discovery to support their request for injunctive relief. If this Motion is heard in the ordinary course, it will likely still be pending after the Court has ruled upon Plaintiffs' request for extraordinary relief.

1 Pursuant to Local Rule 7-4, Attorneys LaTeigra Cahill and Rebecca Bruch
2 conferred regarding the contents of this motion. See Declaration of LaTeigra
3 Cahill ("Cahill Decl."), attached as **Exhibit 1**. Ms. Bruch's position is that the
4 documents discussed below can be produced via a public records request. See
5 Cahill Decl. at 1. The Plaintiffs have already sent a public records request and
6 have asked that the request be processed on an expedited basis. See Public
7 Records Request at **Exhibit 2**. However, there is no guarantee that the records will
8 be produced timely. If the records are produced as soon as possible, the Plaintiffs
9 will withdraw this Motion.

10 This Motion is based upon the attached Memorandum of Points and
11 Authorities, the papers and pleadings on file herein, and any oral argument
12 scheduled by this Court.

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **1.0 INTRODUCTION**

15 Whenever a party can show good cause for doing so, courts are permitted
16 to allow the parties to engage in discovery earlier than at the conclusion of the
17 Fed. R. Civ. P. 26(f) conference. It is well-settled that a plaintiff can show good
18 cause for early discovery if it has asked for injunctive relief from the court. Here,
19 as detailed in the Motion for Temporary Restraining Order/Preliminary Injunction
20 filed last week, Defendants have unlawfully and maliciously shut down Plaintiffs'
21 business in violation of the First and Fourteenth Amendments to the United States
22 Constitution.

23 When Defendants refused to renew Plaintiffs' brothel license on August 7,
24 2018, they did not do so because Plaintiffs violated any statute or provision of the
25 Nye County code. Rather, they shuttered Plaintiffs' business as retaliation for a
26 defamation lawsuit Plaintiffs filed against County Commissioner Andrew "Butch"
27

1 Borasky and two civil rights suits Plaintiffs filed against Nye County, the Ney County
2 Board of County Commissioners, and County Commissioner Dan Schinhofen.

3 Plaintiffs have made a public records request for the records discussed in
4 this motion, however, if the public records request is not fulfilled by next week,
5 then the Plaintiffs will be prejudiced. Plaintiffs require early discovery to
6 demonstrate to the Court that Defendants' supposed rationale for closing
7 Plaintiffs' brothel is a mere pretext and that the County deviated from the manner
8 in which it typically accepts business license renewal applications from brothels in
9 order to unlawfully deprive Plaintiffs of their business and to deprive Plaintiffs'
10 employees and independent contractors of their livelihoods. Plaintiffs have
11 tailored their requested discovery solely to subjects that will assist the Court in
12 deciding Plaintiffs' Motion for Preliminary Injunction and respectfully request that
13 the Court grant the instant Motion.

14 **2.0 RELEVANT FACTS AND REQUESTED DISCOVERY**

15 Plaintiffs Hof and Cherry Patch have filed a Motion for Temporary
16 Restraining Order/Preliminary Injunction and incorporate the Statement of Facts
17 contained in that Motion. As discussed in the Motion, when Defendants refused
18 to renew Plaintiffs' brothel license on August 7, 2018, Defendants deviated
19 significantly from their typical procedure in order to terminate Plaintiffs' license,
20 shutter the doors of their business, and retaliate against Plaintiffs for filing lawsuits
21 against them.

22 In shutting down Hof's and Cherry Patch's business, Defendants violated
23 Plaintiffs' Constitutional rights, and Plaintiffs are entitled to injunctive relief to
24 restore the status quo, specifically allowing Plaintiffs to operate their brothel,
25 during the pendency of this litigation. In order to fully demonstrate to the Court
26 that Defendants intentionally deprived Plaintiffs of their Constitutional rights when
27 they refused to renew their business license, Plaintiffs do require limited, targeted

1 discovery relevant to their request for injunctive relief. Specifically, they request
2 that the Court permit the following early discovery:

- 3 1. An Order requiring Defendants to produce all records and
4 information providing the dates that the required business license
renewal forms were mailed to brothel owners for the 3rd and 4th
quarters of 2017 and the 1st and 2nd quarters of 2018.
- 5 2. An Order requiring Defendants to produce all records and
6 information providing the dates that Nye County received the
required business license renewal paperwork for all brothels in Nye
County¹ for the 3rd and 4th quarters of 2017 and the 1st and 2nd
quarters of 2018.
- 7 3. An Order requiring Defendants to produce all records and
8 information providing the dates that Nye County received the
payment required for business license renewal from all brothels in Nye
County for the 3rd and 4th quarters of 2017 and the 1st and 2nd quarters
of 2018.
- 9 4. An Order requiring the Person Most Knowledgeable for Nye County
10 with regard to items 1, 2, and 3 to appear for deposition.

11 Plaintiffs request that the Court order Nye County to comply with item
12 numbers 1, 2, 3, and 5 within ten days of the Court's issuance of an Order on this
13 Motion. They request that the Court order Nye County to produce the witness
14 requested for deposition in item number 4 at a time mutually convenient for
15 counsel for both parties and prior to the hearing on the Motion for Preliminary
16 Injunction.

17 **3.0 STANDARD OF REVIEW**

18 Typically, discovery in litigation does not commence until after the parties
19 conduct their conference pursuant to Fed. R. Civ. P. 26(f). See Fed. R. Civ. P.
20 26(d)(1). However, in some instances, the Court will permit the parties to engage
21 in early discovery "for the parties' and witnesses' convenience and in the interests
22

23
24
25 ¹ There are only 4 brothels in Nye County. (See Nye County Agenda
26 Information Form, attached to the Motion for Preliminary Injunction as **Exhibit 3**.)
27 Plaintiffs' requests for information will not burden Defendants, particularly since
the requests are limited to the last 4 license renewal periods.

1 of justice." *Patrick Collins, Inc. v. Doe*, 2010 U.S. Dist. LEXIS 138306, at *4 (N.D. Cal.
2 Dec. 28, 2010). The party requesting early discovery must show "good cause"
3 "that weighs the need for discovery to further justice against the prejudice of the
4 opposing party." *MGM Resorts Int'l v. Does*, 2017 U.S. Dist. LEXIS 138204, at *3 (D.
5 Nev. Aug. 28, 2017) (citing *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273,
6 275-76 (N.D. Cal. 2002)).

7 Good cause "may be found where the need for expedited discovery, in
8 consideration of the administration of justice, outweighs the prejudice to the
9 responding party." *Semitool*, 208 F.R.D. at 276. The good cause standard may be
10 satisfied when the plaintiff is seeking a preliminary injunction. See *Am. LegalNet,
11 Inc. v. Davis*, 673 F. Supp. 2d 1063, 1066 (C.D. Cal. 2009); *El Pollo Loco, S.A. de C.V.
12 v. El Pollo Loco, Inc.*, 344 F. Supp. 2d 986, 991 (S.D. Tex. 2004); *Qwest Comm. Int'l,
13 Inc. v. Worldquest, Inc.*, 213 F.R.D. 418, 419 (D. Col. 2003); Advisory Committee
14 Notes to the 1993 Amendments to Rule 26(d). In determining whether good cause
15 exists:

16 Factors that a court may consider include: "(1) whether a preliminary
17 injunction is pending; (2) the breadth of the discovery requests;
18 (3) the purpose for requesting the expedited discovery; (4) the
19 burden on the defendants to comply with the request; and (5) how
far in advance of the typical discovery process the request was
made."

20 *Am. LegalNet*, 673 F. Supp. 2d at 1067 (quoting *Disability Rights Council of Greater
21 Wash. v. Wash. Metro. Area Transit Auth.*, 234 F.R.D. 4, 7 (D. D.C. 2006) and citing
22 *Qwest Comm.*, 213 F.R.D. at 419).

23 The party seeking the preliminary injunction should demonstrate that the
24 discovery it is seeking is tailored to obtain information relevant to the preliminary
25 injunction determination. See, e.g., *Am. LegalNet*, 673 F. Supp. 2d at 1066-67;
26 *Disability Rights Council of Greater Wash.*, 234 F.R.D. at 7; *Dimension Data N. Am.
v. NetStar-1, Inc.*, 226 F.R.D. 528, 532 (E.D. N.C. 2005). Moreover, the discovery

1 requests should be limited to “information ‘to preserve the status quo.’” Am.
2 LegalNet, 673 F. Supp. 2d at 1068 (quoting *Disability Rights Council of Greater*
3 *Wash.*, 234 F.R.D. at 7; *Dimension Data N. Am.*, 226 F.R.D. at 532).

4 **4.0 LEGAL ARGUMENT**

5 The subjects upon which Plaintiffs are requesting early discovery are
6 narrowly tailored to the subject matter of their motion for injunctive relief and are
7 necessary to provide this Court with a fully formed picture of the lengths
8 Defendants went to shut down Plaintiffs’ business. Moreover, an analysis of the
9 factors that the Court should consider weigh firmly in favor of allowing Plaintiffs to
10 take early discovery.

11 **4.1 Whether a Motion for Preliminary Injunction Is Pending**

12 This factor would weigh in Plaintiffs’ favor even if they were seeking
13 information to allow them to file for a preliminary injunction. See *Bona Fide*
14 *Conglomorate, Inc. v. SourceAmerica*, 2014 U.S. Dist. LEXIS 189051, at 5 (S.D. Cal.
15 Nov. 7, 2014). In this case, Plaintiffs have already filed a motion for injunctive relief,
16 prior to filing this Motion. Plaintiffs easily satisfy this factor.

17 **4.2 The Breadth of the Discovery Requests**

18 The discovery that Plaintiffs seek is extremely narrow, and Plaintiffs have
19 made a *prima facie* showing that Defendants targeted Plaintiffs. This weighs in
20 favor of granting expedited discovery. See *Bona Fide Conglomorate*, 2014 U.S.
21 Dist. LEXIS 189051, at *5-6.

22 All that Plaintiffs have requested is business license renewal information for
23 four brothels for one calendar year. They have additionally requested a short
24 deposition from the Nye County employee who has the most knowledge with
25 regard to the business license renewals for that calendar year. These requests are
26 narrow and should be granted.

1 **4.3 The Purpose for Requesting Expedited Discovery**

2 Plaintiffs have requested expedited discovery solely to assist the Court in
3 ruling upon their Motion for a Temporary Restraining Order/Preliminary Injunction
4 and have tailored each request for that specific purpose. Plaintiffs are not
5 attempting to conduct “nearly all discovery in an expedited fashion under the
6 premise of preparing for a preliminary injunction hearing.” *Better Packages, Inc.*
7 v. *Zheng*, 2006 U.S. Dist. LEXIS 30119, at *15 (D. N.J. May 17, 2006). Given that
8 Plaintiffs requests are narrowly tailored, this factor weighs in Plaintiffs’ favor. See,
9 e.g., *Palermo v. Underground Solutions, Inc.*, 2012 U.S. Dist. LEXIS 80616, at *7-8 (S.D.
10 Cal. June 11, 2012).

11 First, with regard to Requests 1, 2, and 3, *supra* Section 2.0, Plaintiffs seek
12 information and documents regarding business license renewals for Nye County’s
13 four brothels for quarters 3 and 4 of 2017 and quarters 1 and 2 of 2018 because
14 Plaintiffs are confident that these documents and information will demonstrate
15 that Defendants deviated from the manner in which they normally renew brothel
16 business licenses to ensure that they could shut the doors of Plaintiffs’ brothel.
17 These documents and information will also demonstrate that Defendants excused
18 “violations” by the owners of Nye County’s three brothels that are not owned by
19 Plaintiffs while taking Plaintiffs to task for those “violations.” Plaintiffs seek the
20 deposition of Defendant Nye County’s Person Most Knowledgeable for the same
21 purpose.

22 Everything that Plaintiffs have requested has been done in order to show
23 the Court that it should preserve the status quo. In other words, the Court should
24 issue an injunction permitting Plaintiffs’ business to operate during the pendency
25 of this litigation, and these documents will assist the Court in reaching that
26 conclusion.

4.4 The Burden on Defendants

There will be no undue burden on Defendants with regard to producing the requested discovery. In fact, there will be virtually no burden at all. If the discovery requests are not broad and burdensome, this weighs in favor of expedited discovery. See *Profil Institut Fur Stoffwechselforschung Gbmh v. Profil. Inst. For Clinical Research*, 2016 U.S. Dist. LEXIS 175238, at 14 (S.D. Cal. Dec. 16, 2016).

Plaintiffs are requesting documents and information from Defendants that is no more than one year old. The documents should still be easily accessible as business records, and the deponent provided by the County will not be asked to recall information that is more than one year old.

4.5 How Far in Advance the Request Was Made

Finally, while Plaintiff has made its request for early discovery in advance of when discovery would normally commence, they have already demonstrated the need for that discovery and that they are not attempting to abuse early discovery by demanding information not related to their preliminary injunction motion. Moreover, Hof and Cherry Patch have demonstrated that, while limited discovery at this time would not burden Defendants, Plaintiffs would be “prejudiced if required to wait until discovery opens” to obtain the requested information. *Bona-Fide Conglomerate*, 2014 U.S. Dist. LEXIS 189051, at *7.

Furthermore, Defendants possess no legitimate challenges to the jurisdiction of this Court that might compel the Court to wait to allow early discovery. See, e.g., *Profil Institut Fur Stoffwechselforschung*, 2016 U.S. Dist. LEXIS, at 15. While discovery would not typically commence this early in a case, there is no reason to deny Plaintiffs' request on that basis, and all other factors weigh heavily in favor of permitting early discovery now.

1 **5.0 CONCLUSION**

2 For each and every reason identified herein, Plaintiffs respectfully request
3 that the Court hear this Motion on an emergency basis and grant it in full.

4

5 Dated: August 14, 2018.

Respectfully Submitted,

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7 /s/ Marc J. Randazza

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